NO. 94-483

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In the Supreme Court of the United States

OCTOBER TERM, 1994

SUCCESSION OF FABIOUS M. RICORD, JR.
Petitioner,

versus

ENERGY TRANSPORTATION COMPANY
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

QUESTION NO. 1

WHETHER PETITIONER HAS DEMONSTRATED SPECIAL AND IMPORTANT REASONS WHICH WOULD JUSTIFY DISCRETIONARY REVIEW UNDER SUPREME COURT RULE 10.

QUESTION NO. 2

WHETHER THE COURT OF APPEALS CORRECTLY DETERMINED THAT PLAINTIFF/PETITIONER DID NOT MEET HIS BURDEN OF ESTABLISHING A *PRIMA FACIE* CASE OF PERSONAL JURISDICTION.

QUESTION NO. 3

WHETHER THE COURT OF APPEALS CORRECTLY APPLIED LOUISIANA'S LONG-ARM STATUTE AS INTERPRETED BY LOUISIANA COURTS.

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STATUTES APPLICABLE TO THE CASE

46 U.S.C. §688 (a):

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right to trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such action shall be under the court of the district in which the defendant employer resides or in which his principal office is located. 46 USC §10302.

Louisiana Revised Statute 13:3201(B):

> B. In addition to the provisions of subsection A, the court of the state may exercise personal jurisdiction over a non-resident on any basis consistent with the constitution of this state and the Constitution of the United States.

STATEMENT OF THE CASE

Petitioner, Fabious M. Ricord, Jr. ("Ricord"), instituted this suit against Energy Transportation Corporation ("ETC") in the United States District Court for the Eastern District of Louisiana alleging admiralty and maritime claims pursuant to the Jones Act, 46 U.S.C. §688, and the general maritime law, for an injury he allegedly sustained while serving as a crew member aboard several ETC vessels, including the LNG CAPRICORN and LNG LEO. Defendant-Respondent, ETC, is incorporated under the laws of the state of Delaware with its principal place of business in New York, New York. ETC operates and manages eight liquid natural gas carriers, each of which sails exclusively between Indonesia and Japan. [Appendix at A 1-2]. Ricord alleges that he was injured as a result of ETC's "continuing conduct" from February 1989 through November 1989 while serving aboard ETC's LNG CAPRICORN and LNG LEO. These vessels, like all ETC vessels, were operating in Asian waters. None of ETC's ships, including the LNG CAPRICORN and LNG LEO, have ever travelled to or from or within Louisiana waters. [Appendix at A 2].

ETC is a closely held corporation which has no Louisiana resident shareholders and it is not, nor has it ever been, incorporated in the state of Louisiana. [Appendix at A 2]. ETC has never had an office in the State of Louisiana nor has it ever been subjected to the jurisdiction of any state or federal court in Louisiana. [Appendix at A 2]. ETC has no sales representatives, employees or agents in the State of Louisiana nor does it own any real or personal property in the state. [Appendix at A 3]. In sum, ETC is not

authorized to do business in Louisiana nor has it ever sought authorization to do business in Louisiana.

ETC has not and does not solicit or advertise for business or any other purpose in Louisiana nor has it ever placed employment advertisements or conducted employee searches in Louisiana. [Appendix at A 3]. Specifically, ETC does not solicit or recruit employees out of the Seafarers International Union Hall in New Orleans, Louisiana. ETC instead hires all unlicensed crew members through the Manpower Coordinator at the Seafarers International Union ("SIU") headquarters located in Piney Point, Maryland. [Appendix at A 3-5]. ETC did not travel to Louisiana to solicit and/or recruit Ricord or any other employee, nor did it negotiate or finalize any employment contracts in Louisiana [Appendix at A 3-4].

As shown in the Affidavit of Steven M. Nielsen, ETC's marine personnel manager [Appendix at A 5-11], Ricord was hired to work as an unlicensed crew member of the defendant's vessels pursuant to Article III, Section 1 of ETC's collective bargaining agreement with the SIU which provides in Subsection "A" that:

> The union agrees to furnish the company with qualified, physically fit unlicensed personnel having the required rating, when and where they are required by the Company (ETC). [Appendix at A 13]

In his affidavit, Mr. Nielsen thoroughly explains the hiring procedure routinely employed by ETC pursuant to its collective bargaining agreement with the SIU. [Appendix at

A 7-11]. Mr. Nielsen states that unlicensed personnel aboard ETC's ships serve in the ordinary case for four months whereupon they are relieved. The crew's tour of duty is staggered to avoid a situation where more than a few crew members are replaced at one time. The eight ETC vessels maintain a close schedule and, as a result, certain crew members aboard a particular ship are repatriated at a port in Japan on each occasion that the ship returns to that country. Because of this schedule the SIU typically has a full month supply of replacements, this being the approximate period of time that elapses from Mr. Neilsen's request to the SIU for replacement to the time when, in the ordinary course of crew rotation, such scheduled replacements are needed. Thirty days before a scheduled replacement in Japan of an unlicensed SIU seaman, Mr. Nielsen personally calls the Manpower Pool of SIU's national headquarters in Piney Point, Maryland, at which time he identifies the ratings needed, e.g., two able-bodied seaman, one ordinary seaman, and one steward's assistant. He also gives the Manpower Pool the ETC's ship's name, the port in Japan where the vessel is expected approximately a month hence, and the approximate date of its arrival. An SIU employee in Piney Point, Maryland, Carol Johnson, then contacts SIU seamen through the country to solicit their willingness to accept the assignment. *Which union member is called on a particular occasion is a matter that is strictly within the union's discretion.* It was through this procedure that Ricord became designated by the union to accept employment with ETC. ETC played no part in that designation. ETC never directly contacted Ricord or any other SIU seamen for the purpose of asking them either to apply to the SIU for work aboard ETC's vessels or to offer them such employment. Instead, Mr.

Nielsen makes it clear that employment is offered to the SIU member by the SIU Manpower Pool in Piney Point, Maryland and, in turn, seaman/replacements are offered by the Manpower Pool to ETC. [Appendix at A 7-11].

Based on these undisputed facts, ETC moved to dismiss for lack of *in personam* jurisdiction pursuant to Fed. R. Civ. P. 12 (b)(2). The district court granted ETC's motion to dismiss in a judgment entered November 3, 1992, holding that ETC's contacts with Louisiana were insufficient to confer personal jurisdiction . [Appendix at A 15]. The Court of Appeals for the Fifth Circuit affirmed the judgment of the district court. [Appendix at 26]. Plaintiff's Petition for Rehearing was denied on June 16, 1994. [Appendix at A 31].

SUMMARY OF ARGUMENT

A. No Special and Important Reasons Can be Shown for This Court to Grant Discretionary Review.

Petitioners have not and cannot show "special and important reasons" which would warrant this Court exercising discretionary review. This case involves the application of well-settled principles to a familiar factual situation that has little significance except to the parties themselves.

B. The Fifth Circuit's Ruling that Mr. Ricord Did Not Meet His Burden of Establishing a *Prima Facie* Case of Personal Jurisdiction Should Be Affirmed.

The burden falls on the plaintiff to make a *prima*

facie showing that personal jurisdiction exists. Plaintiff has not met this burden. ETC simply does not have the requisite minimum contacts with the state of Louisiana in order for a Louisiana court to exercise personal jurisdiction. ETC conducts no business in Louisiana, ETC ships do not, and have never, called in any Louisiana ports. ETC has not and does not solicit or advertise for business or employees or for any other purpose in Louisiana, and Ricord was not hired in Louisiana. Accordingly, it is clear that ETC has not purposely availed itself of the rights and privileges of Louisiana and did not purposely direct its activities towards Louisiana.

C. The Fifth Circuit Correctly Applied Louisiana's Long-Arm Statute as Interpreted by Louisiana Courts.

The 1987 amendment to the Louisiana Long-Arm Statute extends Long-Arm jurisdiction of a Louisiana court to the limits allowed by due process. Accordingly, the Fifth Circuit correctly applied federal constitutional standards when considering whether a Louisiana court could exercise personal jurisdiction over ETC.

Additionally, Petitioner's argument that the Fifth Circuit failed to follow Louisiana jurisprudence is simply incorrect. *Marullo v. Zuppardo,* 454 So.2d 268 (La.App. 4 Cir. 1984) writ denied, 458 So.2d 477 is readily distinguishable from the issues before this Court and is therefore not controlling.

ARGUMENT

A. No Special and Important Reasons Can Be Shown for This Court to Grant Discretionary Review.

Petitioners have shown no special circumstances which would warrant this Court's review.

Supreme Court Rule 10 states:

> A petition for a writ of certiorari will be granted only where there are special and important reasons therefor.

This Court in *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74, 75 S.Ct. 614, 616 (1954) held that certiorari should not be granted except in cases involving principals the settlement of which is important to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeals. *Id.* at 79, 75 S.Ct. at 620. (Citing *Layne & Bowler Corp v. Western Well Works, Inc.*, 261 U.S. 387, 393, 43 S.Ct. 422, 423 (1923)). This case does not involve any inter-circuit conflict, and its only significance is to the parties themselves. It has been ordered that the Fifth Circuit opinion not be published, an indication of the unimportance of this case to the public.[1] [Appendix at A 26]. It would be a "poor use of

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[1] Page 1 of the opinion states that:

> "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the

judicial resources when, as here, [this Court] takes [this] case merely to reaffirm (without revisiting) settled law." *Powell v. Nevada*, ____, U.S. ____, 114 S.Ct. 1280, 1285 (1994)(J. Thomas, dissenting).

B. The Fifth Circuit Correctly Concluded that Mr. Ricord Did Not Meet His Burden of Establishing a *Prima Facie* Case of Personal Jurisdiction

The party who seeks to invoke a district court's jurisdiction must make a *prima facie* showing of facts sufficient to establish jurisdiction over a non-resident defendant. *Jones v. Petty-Ray Geophysical Geosource, Inc.*, 954 F.2d 1061 (5th Cir. 1992); *Bullion v. Gillespie*, 895 F.2d 213 (5th Cir. 1990); *WNS, Inc. v. Farro*, 884 F.2d 200 (5th Cir. 1989). The party must prove that the defendant is engaged in certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945). As the district court in this matter recognized, uncontroverted jurisdictional allegations in the plaintiff's complaint must be taken as true and any conflicts contained in the parties' affidavits must be resolved in favor of the plaintiff. [Appendix at A 21]. In the present case, however, there are no disputed facts. It is undisputed that ETC has no offices or operations in Louisiana. ETC vessels do not call on Louisiana ports. On each and every occasion upon which Ricord worked for ETC it was as a result of ETC contacting the SIU's headquarters in Piney Point, Maryland

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footnote 1 continued

public and burdens on the legal profession. Pursuant to (Local Rule 47.5) the Court has determined that this opinion should be not published."

and the SIU in turn contacting Ricord through the SIU Hall in New Orleans. Finally, Ricord's alleged injuries occurred on ETC vessels sailing in Asian waters. Under these factual circumstances, it is clear that the Fifth Circuit was correct in holding that plaintiff has not carried the burden of proof in demonstrating that ETC has minimum contacts sufficient to subject it to the personal jurisdiction of a Louisiana court.

Petitioner bases his claim that he has established a *prima facie* case on the flimsy allegation that Ricord was engaged for employment as a seaman by ETC in Louisiana. Plaintiff argues that Ricord was hired by ETC in Louisiana by referring to ETC's "individual crew information card" which indicates "port engaged" as New Orleans. This argument was correctly rejected by both the Fifth Circuit and the district court. [Appendix at A 23, 29]. As the supplemental affidavit of ETC's Steven M. Nielsen makes clear, the term "port of engagement" to which the individual crew information form refers is simply the location in the United States from which the seaman who has been contacted through the SIU at its national headquarters in Maryland departs for the vessel in Japan. The seaman is not "hired" for employment at this American location. Rather, like any blue-water seaman, the seaman does not become employed by the vessel owner until he signs shipping articles. As Mr. Nielsen's affidavit explains, these shipping articles constitute the contract of employment between the seaman and ETC and they are not signed by the seaman until he has reached his vessel. Ricord, on each occasion on which he worked for ETC, signed the shipping articles in Japan, and accordingly was not employed by ETC until he reached Japan. *See* 46 U.S.C. §10302, *et.seq.*; 1 B

Benedict on Admiralty (1993), §62, *et. seq.* Plaintiff does not dispute that Ricord always signed shipping articles in Japan. Instead, Plaintiff argues that the term "port engaged" is the port in which the employee is hired, employed or retained. This argument was summarily rejected by both the district court and the Fifth Circuit which properly concluded that Ricord was not employed by ETC until he signed articles in Japan. [Appendix at A 23, 29].

The SIU's Mr. Peth's affidavit certainly suggests nothing to the contrary. Indeed, the affidavit makes it clear that it is the *SIU*, not ETC, that contacted Ricord through the union's New Orleans hiring hall. [Appendix at A 16]. It remains undisputed that ETC's only contact with the SIU in connection with Ricord's hiring occurred at the union's National Manpower Coordinating Center in Piney Point, Maryland.

C. The Fifth Circuit Correctly Applied Louisiana's Long-Arm Statute.

The analysis used to determine whether a court may assert jurisdiction over a non-resident defendant has two components:

1. The defendant must be amenable to service of process under the forum state's jurisdicitonal Long-Arm Statute.

2. The exercise of jurisdiction under this statute must comport with norms imposed by the due process clause of the Fourteenth Amendment.

Asahi Metal Industry Company v. Superior Court of

California, 480 U.S. 102, 107 S.Ct. 1026 (1987).

The 1987 amendment to the Louisiana Long-Arm Statute extends long-arm jurisdiction of a Louisiana court to the limits allowed by due process. La. R.S. 13:32.01 (b); *Pedalahore v. Astro Park, Inc.*, 745 F.2d 346 (5th Cir. 1984). Therefore, the two-part test cited above is, in Louisiana, actually a one-part test, meaning that a non-resident defendant is subject to the personal jurisdiction and service of process only after the constitutional due process inquiry is satisfied. The due process clause of the Fourteenth Amendment limits the court's power to assert personal jurisdiction over non-resident defendants to situations in which they engage in certain "minimum contacts" with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Company v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945). The Fifth Circuit correctly applied the minimum contacts test in its determination that the Louisiana Long-Arm Statute does not extend long-arm jurisdiction of a Louisiana court over ETC.

Petitioner argues that the Fifth Circuit erred in declining to follow *Marullo v. Zuppardo*, 454 So.2d 268 (La.App. 4 Cir. 1984) writ denied 458 So.2d 477 which held that a non-resident defendant acting directly through an agent is subject to personal jurisdiction. *Marullo* is both factually and legally distinguishable from the present case. It is plaintiff's suggestion that SIU is an agent of ETC. However, plaintiff cites no authority, because none exists, for his theory that a union is the employer's agent in a situation where the union provides employees under the terms of a collective bargaining agreement. It is nowhere

suggested, for indeed it is not the case, that ETC could control the SIU or that SIU had the right to make representations on behalf of ETC or to bind ETC. Further, even if the SIU was an "agent" of ETC, ETC only requested seaman through the SIU's Piney Point, Maryland location and did not instruct the SIU to directly solicit employers in Louisiana. For these reasons, it is clear that the Fifth Circuit did not err in finding that the Louisiana Long-Arm Statute did not extend long-arm jurisdiciton over ETC.

CONCLUSION

The Fifth Circuit was correct in ruling that Petitioner did not meet his burden of establishing a *prima facie* case of personal jurisdiction and in its application of the Louisiana Long-Arm Statute as interpreted by Louisiana courts. Further, Petitioner has not shown special and important reasons which would warrant discretionary review of this matter.

For these reasons, Respondent respectfully asks this Court to deny the petition for writ of certiorari.

Respectfully submitted

O'NEIL, EICHIN, MILLER, BRECKINRIDGE & SAPORITO

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Attorney for Defendant-Respondent

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

----------X

FABIOUS M. RICORD, JR.,
Plaintiff,

-against-

Civil Action
No. 92-3797

ENERGY TRANSPORTATION CORPORATION,
Defendant.

AFFADAVIT SECTION "A"

----------X

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

BEFORE ME the undersigned authority, personally came and appeared:

KENDALL G. CHEN who, after being duly sworn, did depose and state as follows:

1. I have personal knowledge of the matters contained herein and am competent to testify thereto.

2. I am the President of Energy Transportation Corp. ("ETC"). This affidavit is submitted on behalf of ETC in support of ETC's Motion to Dismiss plaintiff's summons and complaint in the above-captioned complaint for lack of personal jurisdiction.

3. ETC operates and manages eight liquid natural gas carriers, each of which sails between Indonesia and Japan. These ships, including the LNG CAPRICORN and the LNG LEO (the vessels on which plaintiff was a crew member), do not travel to or from the State of Louisiana. None of ETC's ships, including the LNG CAPRICORN and the LNG LEO, have ever been in the state of Louisiana for any purposes.

4. ETC is incorporated under the laws of the State of Delaware. It is not, nor has it ever been, incorporated in the State of Louisiana.

5. ETC's principal place of business and sole United States office is located in the State of New York. ETC does not have, nor has ETC ever had, offices in the State of Louisiana or in any state other than New York.

6. With the exception of the above-entitled action. ETC has never been subjected to the jurisdiction of, nor has it brought suit in, any state or federal court in Louisiana. ETC has never authorized an agent to accept service of process or for any other purpose in Louisiana.

7. ETC neither operates nor manages any ships in Louisiana. It is not authorized to do business in Louisiana, nor has it ever sought authorization to do business in the State of Louisiana.

8. ETC has no sales representatives, employees, or agents in the State of Louisiana.

9. ETC owns no real or personal property in the State

of Louisiana.

10. ETC maintains no telephone listings in the State of Louisiana.

11. ETC has no bank accounts of any kind in the State of Louisiana.

12. ETC has never been assessed or paid any taxes to the State of Louisiana.

13. ETC has not and does not solicit business or advertise for business or any other purpose in the State of Louisiana.

14. ETC has not and does not solicit business or advertise for business or any other purpose in the State of Louisiana.

15. ETC does not, nor has it ever, placed employment ads or conducted employee searches in the State of Louisiana. ETC hires all crew members through the Manpower Coordinator at Piney Point, Maryland. All crew members are members of the Seafarer's International Union. Crew members are hired on a basis determined by the applicable union policies and procedures. Mr. Ricord, plaintiff herein, was hired accordingly.

16. ETC is a closely held corporation and has no resident Louisiana shareholders.

/s/ Kendall G. Chen

KENDALL G. CHEN

Sworn to and subscribed
before me this (illegible) day
of (illegible), 1993

/s/ Kathleen Michetti
NOTARY PUBLIC

Kathleen Michetti
Notary Public, State of New York
No. 43-4756945
Qualified in Richmond County
Certificate filed in New York County
Term expires 01/31/94

APPENDIX B

STATE OF NEW YORK

COUNTY OF NEW YORK

BEFORE ME, the undersigned authority, personally came and appeared:

STEVEN M. NIELSEN

who, after being duly sworn, did depose and state as follows:

(1) I have personal knowledge of the matters contained herein and am competent to testify thereto.

(2) I am the personnel manager of Energy Transportation Corporation ("ETC") and in that capacity have previously submitted an affidavit of this matter, the contents of which are adopted herein as if the same were copied *in extenso.*

(3) As explained in my initial affidavit, ETC obtains unlicensed personnel such as Fabious M. Ricord, Jr. to crew its ships by referral from the "manpower pool" at Piney Point, Maryland, ETC is obligated by contract with the SIU to obtain its unrated seaman through the SIU and ETC always does so through this "manpower pool." ETC does not hire seamen through the SIU Hall in New Orleans, Louisiana and, specifically, did not hire Fabious M. Ricord, Jr. through the SIU Hall in New Orleans, Louisiana.

(4) An unrated seaman such as Fabious M. Ricord, Jr. does not become employed by ETC until the seaman signs shipping articles which constitutes a contract of employment between the seaman and ETC. Shipping articles are not signed until the seaman reaches the particular ETC vessel aboard which he is to serve at the port in Japan where the seaman meets the vessel.

(5) On each occasion on which Fabious M. Ricord, Jr. was employed by ETC he did not become employed until he signed shipping articles and this was always done at the port in Japan where he met the ETC vessel.

(6) The "port of engagement" to which the Individual Crew Information Form refers is simply the location in the United States from which the seaman departs for Japan. The seaman is not "engaged" for employment at this American location. He only becomes employed by ETC upon reaching the ETC vessel in Japan and signing shipping articles. ETC accordingly did not hire Ricord in Louisiana.

(7) ETC does not regularly "retain" a physician for examining seamen. Rather, when a seaman who happens to live in Louisiana submits a claim for cure benefits, ETC, through its attorneys, may have the seaman examined by a New Orleans physician. This is done strictly as a convenience to the seaman.

/s/ Steven M. Nielson

STEVEN M. NIELSON

SWORN TO AND SUBSCRIBED BEFORE ME, THIS 15th DAY OF OCTOBER, 1993.

/s/ **Jessica Morelli**

NOTARY PUBLIC, My Commission Expires At: Oct. 31, 1993

JESSICA MORELLI
Notary Public State of New York
No 4699388
Qualified in New York County
Term Expires Oct 31, 1993

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

----------X

FABIOUS M. RICORD, JR.,
Plaintiff,

-against-

Civil Action
No. 92-3797

ENERGY TRANSPORTATION CORPORATION,
Defendant.

AFFADAVIT SECTION "A"

----------X

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

BEFORE ME the undersigned authority, personally came and appeared:

STEVEN M. NIELSEN who, after being duly sworn, did depose and state as follows:

1. I have personal knowledge of the matters contained herein and am competent to testify thereto.

2. I am the Personnel Manager of Energy Transportation Corporation ("ETC"). I have been so employed since April, 1984. Since that time, my office has been in the offices of ETC in New York City, which, during the time of my employment, have always been in New York City. I replaced Mr. Joseph Caiola, who was Marine Personnel

Manager until leaving ETC's employment in March, 1984, a fact represented to me to be true by the ETC personnel department based on non-marine personnel company records. At the time I began employment with ETC, Phillip Lameck was also employed by the company in a personnel/claim handling capacity. Mr. Lameck died very suddenly soon after I became employed, his last day of employment having been July 13, 1984, again a fact reported to me by the ETC non-marine personnel department.

3. Since April, 1984, I have been very frequently involved with the Seafarer's International Union ("SIU") with respect to hiring replacement unlicensed personnel on the eight ETC vessels, each one of which trades exclusively between Indonesia and Japan. ETC has a collective bargaining agreement with the SIU, by virtue of which the SIU supplies all unlicensed ratings, i.e., crew members who, like plaintiff, are not ships offices. The agreement in force in February, 1989, when Mr. Ricord was hired to work as an unlicensed member of the crew of ETC's LNG CAPRICORN and LNG-LEO, in Article III Employment, Section 1 Hirings, provides in subsection (a) that: "[t]he Union agrees to furnish the company with qualified, physically fit Unlicensed Personnel having the required ratings, when and where they are required by the Company [ETC]." This subsection also provides that ETC can employ seamen directly "...if the Union is unable to furnish such personnel." Since April, 1984, this, to my knowledge, has never occurred. The collective bargaining agreement, in Section 3 of Article III, provides for the company's "Rejection of Employment" of a particular seaman. Copies of the face page and referred to as part of Article III of the ETC/SIU Collective Bargaining Agreement covering the

July 1, 1985 - June 15, 1987 period are annexed hereto as Exhibit "A."

4. Unlicensed personnel aboard ETC ships serve in the ordinary case for four months whereupon they are relieved. The crew's tours of duty are, of course, staggered to avoid a situation where more than a few crew members are replaced at any one time. The eight vessels maintain a quite close schedule and, as a result, certain crew members aboard a particular ship are repatriated at a port in Japan on each occasion that ship returns to that country. The upshot of all this is that the SIU has typically a full month to supply replacements, this being the approximate period of time from my request to the SIU for replacement to when, in the ordinary course of crew rotation, such scheduled replacements are needed.

5. About 30 days before scheduled replacement in Japan of unlicensed SIU seamen aboard ETC vessels, I call the so-called "manpower pool" at the SIU Piney Point, Maryland, plaintiff's union's national headquarters. At that time, I identify the ratings needed, e.g., two able-bodied seamen, one ordinary seaman and one steward's assistant. I also give the manpower pool the ship's name, the port in Japan where the vessel is expected about a month hence, and the approximate date. The manpower pool at Piney Point is, for all practical purposes a lady whose name is Carol Johnson. It is my understanding that Ms. Johnson calls SIU seamen to solicit their willingness to accept assignment; and that who is called on a particular occasion is a matter of union decision. After, to my understanding, these calls are made, in the usual case less than one week later, Ms. Johnson calls back with name and

rating. This was done in this case. Plaintiff, Fabious M. Ricord, Jr. was designated by the union; and ETC did not object to that designation.

6. By union contract, ETC is obliged to provide transportation for SIU seamen from the United States to Japan. Since I was employed by ETC in April, 1984, this was done by ETC's travel agent. Most recently, this travel agent has done business under that name VTS Travel Enterprises, Inc./Woodside. The travel agent's offices are at 880 Third Avenue, Third Avenue, New York, New York. VTS Travel arranges transportation for the SIU replacements. It is they, and not ETC Marine Personnel, which contracts the replacement SIU seamen regarding travel to Japan.

7. SIU seamen living in the various states of the United States are, of course, supplied as ETC crew replacements. Accordingly, VTS Travel needs certain personnel information to arrange tickets for various places of departure in the United States. This information is generated by ETC Marine Personnel initially; by telephone contacts between me or my office and the SIU seamen prior to the first occasions the seamen sails for ETC. A special endorsement, or LNG "ticket" is needed to serve on ETC vessels; and frequently the first occasion on which an SIU seaman sails for us is soon after he or she obtains this endorsement after a period of schooling at the SIU's Harry Lundberg School of Seamanship, which is also located in Piney Point. This typically is the first *and* last direct contact between ETC and SIU unlicensed personnel, who serve on our vessels. To my recollection, I have never spoken to plaintiff Fabious M. Ricord, Jr. Marine personnel

never calls SIU seamen for purposes of asking them either to apply to the SIU for work aboard our vessels, or to offer them such employment. Instead, employment is offered to the SIU member by the SIU manpower pool, and, in turn, seaman/replacements are offered by the manpower pool, to ETC.

8. As mentioned, ETC's travel agent VTS arranges transportation for SIU replacement crew members. Prior to being called VTS, this travel agent was called "City Travel" and "Hickory Travel." Since about 1987, I have dealt with Viola Collins at VTS.

/s/ Steven M. Nielsen
STEVEN M. NIELSEN

Sworn to and subscribed
before me this (illegible) day
of (illegible), 1993

/s/ Kathleen Michetti
NOTARY PUBLIC

Kathleen Michetti
Notary Public, State of New York
No. 43-4756945
Qualified in Richmond County
Certificate filed in New York County
Term expires 01/31/94

EXHIBIT "A"
to
NEILSEN AFFIDAVIT

Energy Transportation Corporation

and

Seafarers International Union of North America,
Atlantic, Gulf, Lakes and Inland Waters
District, AFL-CIO

June 16, 1987 - June 15, 1990

(j) The Impartial Arbitrator shall have the authority to apply or utilize past practices only insofar as they may aid in determining the Parties intentions with respect to any provision specifically addressed in this Agreement.

(k) The final award of the Impartial Arbitrator shall be in writing and shall be issued with opinion and shall be served by Certified Mail, Return Receipt Requested directed to the Company at Stevens Tower, 1185 Avenue of the Americas, 24th Floor, New York 10036 and the Union at 5201 Auth Way, Camp Springs, Maryland 20746.

(l) The agreed fee and reasonable expense incurred by the Impartial Arbitrator in executing his responsibilities, including expenses of stenographic transcripts, shall be borne by the losing party.

(m) The above Sections 3, 4 and 5 of this Article II shall remain in full force and effect from the date of execution of this Agreement to its expiration, including any period when this Agreement is subject to be reopened or is reopened for any purpose.

Section 6. Severability. This Agreement shall be subject to all valid applicable laws, orders, rules and regulations of governmental authorities in the United States of America having jurisdiction; and either Party hereto shall have the right to contest the validity of any such law, order, rule or regulation, and the acquiescence therein or compliance therewith for any period of time which shall not be construed as a waiver of such right; provided, however, if any part of this Agreement is in conflict therewith, such part shall be deemed inapplicable, and to the extent

thereof, shall be deemed severed from this Agreement, and the remainder of this Agreement shall remain in full force and effect.

ARTICLE III

EMPLOYMENT

Section 1. Hiring. (a) The Union agrees to furnish the Company with qualified, physically fit Unlicensed Personnel having the required ratings, when and where they are required and requested by the Company, who shall possess the ratings required to fill the Company's employment requirements; and if possible, such persons shall be obtained through Hiring Halls established by the Union and administered by the Union. However, if the Union is unable to furnish such personnel to fill vacancies within the time required to insure the LNG carrier's scheduled sailing, the Company may, from whatever source, hire such persons as required to permit the LNG carrier to sail.

AFFIDAVIT OF CARL PETH

STATE OF MARYLAND)
)
COUNTY OF ST MARY'S)

BEFORE ME, the undersigned authority in and for said County and state, personally came and appeared CARL PETH, who deposes and says as follows:

1. I am the Director of the Manpower Office of the Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District ("Union" or "SIU"). This office is located in Piney Point, Maryland.

2. The Manpower Office is responsible for dispatching job orders for positions on board SIU-contracted vessels to Union-affiliated hiring halls located in port cities throughout the United States, including a hiring hall in New Orleans, Louisiana.

3. During the past five years, Energy Transportation Corporation (ETC) had a collective bargaining agreement with the SIU. Pursuant to this agreement, ETC filled positions on board its vessels through the Manpower Office.

4. During the past five years, the SIU has filled jobs on board ETC vessels at its hiring hall in New Orleans, Louisiana.

/s/ Carl Peth

Carl Peth

SWORN to before me this 28th day of October, 1993.

/s/ Sharon L. Farr
Notary Public

My commission expires: 11/1/96

SHARON L. FARR
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires on November 1, 1996

EXHIBIT

"A"

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FABIOUS M. RICORD, JR.	CIVIL ACTION
VERSUS	NO. 92-3797
ENERGY TRANSPORTATION CO.	SECTION "A"

RECEIVED
BY (Illegible)

FILED
NOV 3 '93

J U D G M E N T

Considering the written Order of the Court on file herein, accordingly;

IT IS ORDERED, ADJUDGED, AND DECREED, that there be judgment in favor of defendant Energy Transportation Co. and against plaintiff Succession of Fabious M. Ricord, Jr., dismissing without prejudice the plaintiff's claims.

New Orleans, Louisiana, this 3rd day of November, 1993.

/s/ Loretta G. Whyte
LORETTA G. WHYTE, CLERK

APPROVED AS TO FORM:

/s/ Charles Schwartz, Jr.
UNITED STATES DISTRICT JUDGE

DATE OF ENTRY NOV 4 1993

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FABIOUS M. RICORD, JR.	CIVIL ACTION
VERSUS	NO. 92-3797
ENERGY TRANSPORTATION CO.	SECTION "A"

Before the Court is defendant Energy Transportation Co. ("ETC's") Motion to Dismiss for Lack of Personal Jurisdiction. Plaintiff, the Succession of Fabious M. Ricord, Jr. ("Ricord") filed formal opposition. The matter was set for oral hearing on October 13, 1993 but was submitted on the briefs on October 29, 1993. Considering all of the submissions of the parties, and for the reasons hereinafter stated, the Court grants ETC's Motion to Dismiss for Lack of Personal Jurisdiction.

BACKGROUND:

Ricord brought this admiralty and maritime suit pursuant to the Jones Act, 46 U.S.C. § 688 and the general maritime law against ETC for injuries he sustained while serving as a crew member aboard several vessels owned and operated by ETC in Asian waters. Ricord died on April 1, 1993, and his succession was substituted as the proper party plaintiff in this action. At the time of the alleged injuries, plaintiff was stationed aboard the defendant's vessels including the LNG-CAPRICORN and the LNG-LEO which were operating in Asian waters at all pertinent times.

DATE OF ENTRY NOV 2 1993

ETC operates and manages eight liquid natural gas carriers, each of which sails exclusively between Indonesia and Japan. It is undisputed that none of the defendant's vessels on which the plaintiff was allegedly injured travel to or from or anywhere near Louisiana waters.[1]

ETC is a closely held corporation incorporated under the laws of the state of Delaware and its principal place of business is New York, New York. It has no Louisiana resident shareholders. ETC has and has never had any offices located in the state of Louisiana or any state other than New York and it has no agent to accept service of process in Louisiana. It is further undisputed that ETC has no sales representatives, employees or agents in Louisiana, owns no real or personal property in Louisiana, and has never been assessed or paid taxes in Louisiana. ETC is not authorized to do business and has never sought authorization to do business in the State of Louisiana.[2]

ETC does not solicit or advertise for business or any other purpose in Louisiana and has never placed employment advertisements or conducted employee searches in Louisiana. Instead, ETC hires all crew members through the Manpower Coordinator at Seafarers International Union ("SIU") Headquarters located in Piney Point, Maryland. It is undisputed that ETC did not travel to Louisiana and/or recruit the plaintiff or any other employees, nor did it negotiate or finalize any employment contracts in Louisiana.

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[1] Affidavit of Kendal G. Chen (ETC Exhibit "1").

[2] Id.

Plaintiff was hired to work as an unlicensed crew member on the defendant's vessels pursuant to Article 3, Section 1 of ETC's collective bargaining agreement with SIU which provides:

> The union agrees to furnish the company with qualified, physically fit, unlicensed personnel having the required rating, when and where they are required by the company (ETC).[3]

ETC's Marine Personnel Manager Steven Nielsen explained the hiring procedure routinely employed by ETC pursuant to its collective bargaining agreement with SIU as follows:

> About 30 days before scheduled replacement in Japan of unlicensed SIU seaman aboard ETC vessels, I call the so-called "manpower pool" at the SIU Piney Point, Maryland, plaintiff's union's national headquarters. At that time, I identify the ratings needed, e.g., two able-bodied seamen, one ordinary seaman, and one steward's assistant. I also give the manpower pool the ship's name, the port in Japan where the vessel is expected about a month hence, and the approximate date. The manpower pool at Piney Point is, for all practical purposes a lady whose name is Carol Johnson. It is my understanding that Ms. Johnson calls SIU seaman to solicit their willingness to accept assignment; and that who is called on a particular occasion is a matter of union

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[3] See Exhibit "A" to Neilsen Affidavit.

decision. After, to my understanding, these calls are made, in the usual case less than one week later, Ms. Johnson calls back with name and rating. This was done in this case. Plaintiff, Fabious M. Ricord, Jr. was designated by the union; and ETC did not object to that designation.

By union contract, ETC is obliged to provide transportation for SIU seaman from the United States to Japan. Since I was employed by ETC in April, 1984, this was done by ETC's travel agent. Most recently, this travel agent has done business under the name VTS Travel Enterprises, Inc./Woodside. The travel agent's offices are at 880 Third Avenue, New York, New York. VTS Travel arranges the transportation for SIU replacements. It is they, and not ETC Marine Personnel, which contact the replacement SIU seaman regarding travel to Japan.

... A special endorsement, or LNG "ticket" is needed to serve on ETC vessels; and frequently the first occasion on which an SIU seaman sails for us is soon after he or she obtains this endorsement after a period of schooling at the SIU's Harry Lundberg School of Seamanship, which is also located in Piney Point. This typically is the first *and* last direct contact between ETC and the SIU unlicensed personnel, who serve on our vessels. To my recollection, I have never spoken to plaintiff Fabious M. Ricord, Jr. Marine Personnel never calls SIU seaman for purposes of asking them either to apply to the SIU for work aboard our vessels, or to offer them such employment. In-

> stead, employment is offered to the SIU member by the SIU manpower pool, and, in turn, seaman/replacements are offered by the manpower pool to ETC.[4]

In summary and based upon the aforementioned undisputed facts, ETC contends that because it transacts no business in Louisiana, has no contacts whatsoever with Louisiana, did not solicit employees in Louisiana and instead hired through SIU's headquarters in Piney Point, Maryland pursuant to a collective bargaining agreement, it lacks sufficient contacts with Louisiana to support the invocation of personal jurisdiction under the Louisiana long-arm statute.

Plaintiff does not contest any of the facts set forth in the affidavits of ETC's Kendall Chen or Steven Nielsen. There is no dispute that: (1) ETC conducts no business in Louisiana and never has; (2) ETC's vessels have never plied Louisiana waters nor visited Louisiana ports; (3) ETC does not solicit or advertise for business or employees in Louisiana; (4) Ricord was hired pursuant ETC's collective bargaining agreement with SIU at Piney Point, Maryland, the union's national headquarters; (5) the shipping articles executed in Japan by Ricord constitute the contract of his employment with ETC. In short the only contact that ETC has with Louisiana was the fortuitous hiring of plaintiff through the union.

Plaintiff argues, however, that ETC has sufficient contacts with the Louisiana to support this Court's exer-

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[4] Affidavit of Steven M. Nielsen.

cise of jurisdiction based on the following: (1) ETC engaged Ricord for employment in New Orleans, Louisiana[5] on fifteen occasions between 1981 and 1991 as shown by ETC's personnel record on Ricord; (2) ETC retains a New Orleans physician for examining seaman for claims, who submits bills to the ETC for payment and makes maintenance and cure payments to Louisiana seaman; and (3) ETC employee's paychecks are mailed to Louisiana *upon the employee's request. Via* supplemental memorandum in opposition plaintiff submits that the fact that ETC was aware that SIU filled positions through SIU's New Orleans hiring hall ETC creates sufficient contacts with Louisiana for this Court to exercise personal jurisdiction.

Plaintiff served the defendant in this case pursuant to the Louisiana long-arm statute, La.Rev.Stat. § 13:3201, which provides that "a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state or the Constitution of the United States." *Id.*

ANALYSIS

When a challange is made to the court's *in personam* jurisdiction, the party seeks to invoke the district court's jurisdiction bears the burden of making a *prima facie* showing of sufficient facts to establish jurisdiction over the

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[1] As the defendant points out in its reply brief, the shipping articles constitute the contract of employment between Ricord (seaman) and the ETC, which were not signed until the Ricord reached the vessel in Japan. In orther words, on each occasion plaintiff worked for ETC, he signed the shipping articles in Japan, and thus, was not employed by ETC until he reached Japan.

nonresident defendant.[6] In determining whether the plaintiff has established a *prima facie* case of personal jurisdiction, uncontroverted allegations in the complaint must be taken as true.[7] Moreover, all conflicts between the facts contained in the parties' affidavits must be resolved in favor of the plaintiff.[8]

A federal court may exercise jurisdiction over a nonresident defendant provided state law confers such jurisdiction and its exercise comports with due process under the Constitution.[9] Because the Louisiana long-arm statute as amended in 1987 extends to the limits of due process, this Court need only consider whether personal jurisdiction over ETC satisfies federal constitutional requirements.[10]

In *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 107 S.Ct. 1026, 1029, 94 L.Ed.2d 92 (1987), the Supreme Court set forth the two-step test for determining whether a nonresident defendant is subject to a district court's jurisdiction, to wit: first, the district court must determine whether the nonresident defendant purposefully established "minimun contacts" with the forum

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[6] *Jones v. Petty-Ray Geophysical Geosource, Inc.*, 954 F.2d 1061, 1067 (5th Cir. 1992); *Bullion v. Gillespie*, 895 F.2d 213, 216-17 (5th Cir. 1990); *WNS, Inc. v. Farrow*, 884 F.2d 200, 203 (5th Cir. 1989).

[7] *Bullion*, 895 F.2d at 217; *WNS, Inc.*, 884 F.2d at 204.

[8] *Id.*

[9] *Id.*

[10] *Simmons v. SeaTide International, Inc.*, 693 F.Supp. 510, 513 (E.D.La. 1988) (Schwartz, J.).

state such that maintenance of suit does not offend traditional notions of fair play and substantial justice; and second, even where minimum contacts exist, the court must consider whether requiring the defendant to litigate in the forum state would be unfair.

A defendant's contacts with a forum may suppoort general or specific jurisdiction. General jurisdiction refers to a suit that does not arise from the nonresident's contact with the forum, and is asserted only over defendants who maintain continuous and systematic contacts in a particular forum.[11] Specific jurisdiction concerns a suit arising out of or related to a defendant's contacts with the forum state.[12]

Plaintiff argues that defendant's employment/recruitment contacts with Louisiana and that defendant retains a physician in Louisiana are sufficient to subject it to both the general and specific jurisdiction of this court. At the outset the Court notes the undisputed *paucity* of contacts ETC has with this forum. Considering that plaintiff's injuries do not arise out of or relate to any contact the defendant ETC has had with Louisiana, specific jurisdiction is unavailable to the plaintiff in the captioned matter. It cannot be seriously argued that any relationship ETC had with SIU or that ETC had retained a physician in Louisiana has any bearing on whether ETC was at fault or remiss in connection with plaintiff's alleged injuries.

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[11] *Helicopteros Nacionales De Colombia, S.A. v. Hall*, 466 U.S. 408, 415, 104 S.Ct. 1868, 1872, 80 L.Ed.2d 404 (1984).

[12] 104 S.Ct. at 1872 n.8.

Now turning to general jurisdiction, the record reflects that the ETC does not maintain continuous and systematic contacts with this forum. As previously stated, it is undisputed that ETC is incorporated in Delaware and has its principal place of business in New York. It is not registered to do business in Louisiana. It does not transact or solicit business, maintain offices, employ representatives, or advertise in Louisiana and does not have an agent for service of process in Louisiana. On balance, ETC's only contact with Louisiana is that it notified SIU, which utilizes its Louisiana hiring hall among others to fill positions, that it had a job.

The Court considers it wholly irrelevant that: (1) ETC's attorney's have engaged physicians in Louisiana to examine Louisiana seamen who have asserted claims against the company; (2) Ricord chose to instruct ETC to send his paychecks to his Louisiana residence, and (3) plaintiff's crew information card incorrectly reflects his "port of engagement" as New Orleans.

Notwithstanding the foregoing determination that ETC lacks sufficient contacts with this state, the Court addresses the second prong of the test, i.e., the reasonableness of asserting jurisdiction over ETC. The Supreme Court in *Asahi*, supra, has listed several factors that must be considered in the reasonableness equation.[13]

A court must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. It must also weigh in its deter-

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[13] *Asahi*, 107 S.Ct. 1026 (1987).

mination "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies."[14]

Thus, only if this Court has specific jurisdiction over ETC, which it does not, will it have personal jurisdiction over ETC. The contacts cited by plaintiff in the case at bar which have been reiterated herein above simply do not support an inference that the ETC *purposefully availed* itself of the benefits of the forum state. The defendant's contacts must be deliberate, rather than fortuitous, so that the need to invoke the benefits and protection of the forum's laws was reasonable and foreseeable.

The complete absence of purposeful contact with the state of Louisiana *by ETC* leads to no other conclusion than that it would offend the traditional notions of fair play to require it to defend the instant lawsuit in this forum. Thus, this Court lacks personal jurisidiction over ETC.[15] Accordingly, and for all of the above and foregoing reasons,

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[14] *Id.* at 1033.

[15] See *Carter v. Ocean Ships, Inc., C.A.*, No. 90-2132, 1990 LEXIS 11440 (E.D.La.) (Carr, J.) (holding that a Louisiana plaintiff who was hired by the vessel owner through the SIU's Manpower Coordinator in Maryland and who was injured in international waters could not invoke a Louisiana court's jurisdiction over his employer who had no contacts with Louisiana other than the fortuitous hiring of the plaintiff through the union hall); and *Jones v. Maritime Overseas Corp.*, No. 91-3266, 1992 LEXIS 1887 (E.D.La.) (Sear, J.) (holding that in the absence of systematic and continuous contacts, only if the court has specific jurisdiction will it also have personal jurisdiction *and* where the nonresident defendant's only contact with Louisiana is that it notified SIU that it had a job, it was not reasonable to subject it to a suit in this state since it would offend traditional notions of fair play and substantial justice).

IT IS ORDERED that the defendant's motion to dismiss is hereby GRANTED and the plaintiff's claims against it are hereby DISMISSED WITHOUT PREJUDICE.

The Clerk of Court is directed to enter judgment in accordance herewith.

New Orleans, Louisiana, this 2nd day of November, 1993.

/s/ Charles Schwartz, Jr.
UNITED STATES DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3798
Summary Calendar

FILED
MAY 17 1994

FABIOUS M. RICORD,
(Succession of Fabious M. Ricord, Jr.,
substituted as plaintiff in place of
Fabious M. Ricord, Jr.

Plaintiff-Appellant,

versus

ENERGY TRANSPORTATION COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-92-3797-A)

Before REAVLEY, HIGGINBOTHAM and EMILIO M. GARZA, Circuit Judges.

PER CURAIM:*

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of

BACKGROUND

Appellant Fabious Ricord instituted this suit against Energy Transportation Corporation ("ETC") in the Eastern District of Louisiana, alleging admiralty and maritime claims for an injury he obtained while working as a crewmember aboard ETC vessels.[1] The district court granted ETC's motion to dismiss for lack of personal jurisdiction. We affirm.

ETC is a closely held corporation incorporated under the laws of Delaware. Its principal place of business is New York, New York. ETC is not authorized to do business in Louisiana and does not advertise or solicit business in Louisiana. ETC's vessels were operating in Asian waters at the time of the alleged injury; it is undisputed that they did not travel to or from Louisiana.

ETC hires all crew members through the Manpower Coordinator at Seafarers International Union Headquarters ("SIU") located in Piney Point, Maryland. Ricord was hired to work as an unlicensed crew member on ETC vessels through the SIU on fifteen different occasions between 1981 and 1991.[2] When ETC needed seamen, it would

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footnote * continued

well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

[1] Ricord died in 1993, and his succession was substituted as a plaintiff in this suit.

[2] Article III, § I of ETC's collective bargaining agreement with the SIU provides: "The union agrees to furnish the company with qualified,

contact the SIU in Maryland. Ricord was hired by this process when the SIU, to fill the hiring needs of ETC, contacted Ricord through a hiring hall in Louisiana. Ricord's contract of employment with ETC consisted of shipping articles which were signed and executed in Japan; no contract of employment was signed or negotiated in Louisiana. All travel arrangements for seamen such as Ricord were made through ETC's travel agent in New York. The only other peripheral "contacts" ETC had with Louisiana are as follows: 1) ETC pays the costs incurred by hired seamen in Louisiana when they are examined by a doctor there for claims and, 2) ETC employees' paychecks are mailed to Louisiana upon the employees' requests. Ricord argues that this creates sufficient contacts with Louisiana to confer personal jurisdiction. We agree with the district court that these limited "contacts" are insufficient.

DISCUSSION

The burden of establishing the district court's personal jurisdiction over ETC rests with Ricord. *Jones v. Petty-Ray Geophysical Geosource, Inc.*, 954 F.2d 1061, 1067 (5th Cir.), *cert. denied*, 113 S. Ct. 193 (1992). Only a *prima facie* case must be established and any genuine material conflicts must be resolved in Ricord's favor. *Id.*

As we stated in *Jones:*

> [t]wo preconditions generally must be satisfied to allow personal jurisdiction over nonresident

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footnote 2 continued

physically fit unlicensed personnel having the required rating, when and where they are required by the company."

> defendants served out of state: (1) the nonresident must be amenable to sevice of process under the forum state's long-arm statute (an issue that is governed by the law of the forum state); and (2) if the state jurisdictional test is met, the assertion of jurisdiction over the non-resident must be consistent with the Fourteenth Amendment due process clause.

Id.

The Louisiana Long-Arm Statute, as amended, extends long-arm jurisdiction of Louisiana courts to the limits allowed by due process. LA. REV. STAT. ANN. § 13:3201(B) (West 1991). Accordingly, we need only consider whether personal jurisdiction over ETC satisfies federal constitutional standards. The "constitutional touchstone" of the Due Process Clause requires that the defendant purposefully established minimum contacts in the forum state so that maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 107 S. Ct. 1026, 1030, 1033 (1987) (citations omitted). Because Ricord's cause of action did not arise out of or relate to ETC's activities in Louisiana in order to meet specific jurisdiction, the question is whether general jurisdiction exists. *See Helicopteros Nacionales De Colombia v. Hall*, 104 S. Ct. 1868, 1872-73 (1984).

To satisfy general jurisdiction, ETC's contacts with Louisiana must be "continous and systematic." *Id.* The fact that injured ETC seamen occasionally are given medical services by Louisiana doctors who are paid by

ETC, and that employees are permitted to have their paychecks sent to Louisiana cannot be deemed the "continuous and systematic" contacts by which ETC would expect to submit to Louisiana jurisdiction. The crew information card proffered by Ricord, which states that Ricord's "port engaged" was New Orleans, also does not demonstrate sufficient contact with Louisiana. According to the personnel manager of ETC, "port engaged" refers only to the location in the United States from which the hired seamen, who are initially contacted through the SIU headquarters in Maryland, departs for the vessel to travel to Japan. In short, employment is offered to SIU union members by the SIU manpower pool in Maryland, and seamen are then offered to ETC. For all practical purposes, Ricord was located through the union in Maryland and was "hired" when he signed his shipping papers in Japan; the fact that he embarked from Louisiana is not significant.

Ricord argues that according to Louisiana law as set forth in *Marullo v. Zuppardo,* 454 So.2d 268, 270 (La. Ct. App. 1984), a nonresident defendant acting directly through an agent is subject to personal jurisdiction. But *Marullo* is distinguishable from the present case. Even if the union was an "agent" or contractor of ETC, ETC only requested seamen through the Maryland location and did not direct the union to achieve a purpose in Louisiana. That personal jurisdiction in Maryland might exist is arguable,[3] but juridiction cannot be extended to every location that the SIU contacted from Maryland, without any involvement on the part of ETC.

AFFIRMED.

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[3] *See Bass v. Energy Transp. Corp.,* 787 F.Supp. 530, 536-37 (D. Md. 1992) (finding personal jurisdiction existed over ETC in Maryland because SIU trained, brokered, and consistently had contact with ETC employees in Maryland).

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3798

FILED
JUN 16 1994

FABIOUS M. RICORD,
(Succession of Fabious M. Ricord, Jr.,
substituted as plaintiff in place of
Fabious M. Ricord, Jr.

Plaintiff-Appellant,

versus

ENERGY TRANSPORTATION COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana

ON PETITION FOR REHEARING

(June 16, 1994)

Before REAVLEY, HIGGINBOTHAM and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby *denied.*

ENTERED FOR THE COURT:

/s/ Thomas M. Reavley

United States Circuit Judge

CLERK'S NOTE:

SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE